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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,996

08/10/2006

Hiroto Kidokoro

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38834

7590

03/30/2009

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
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WASHINGTON, DC 20036

EXAMINER

LE, HOA VAN

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

03/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,996	Applicant(s) KIDOKORO, HIROTO	
	Examiner Hoa V. Le	Art Unit 1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/10/06 02/08/08</u> . | 6) <input type="checkbox"/> Other: ____. |

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This application is up for consideration.

I. Applicant's prior art submissions have been considered to the extent of the English language as provided. They are so brief and insufficient against the claims.

II. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 10-12 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komoto et al (2005/0026063).

FACT: Komoto et al disclose, teach and suggest an electrographic toner composition and processing steps for forming toner particles. The toner composition comprises color resin particles containing a binder resin, a colorant, a charge control agent and a parting agent. The particles have an average diameter from 4 to 8 microns and an average circularity of from 0.950 to 0.995. Please see the whole disclosure of the applied reference, especially on paragraphs 0029, 0034, 0038, 0078, 0082, 0092, 0094, 0104, 0113 to 0122, 0135 to 0147 and Examples.

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ISSUES: The issues are needed to be resolved to overcome the applied reference:

(1) The language "is produced by..." a composition (material) claim is a product-by-process. According to the MPEP, "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (MPEP 2113 [R-I], see *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966).

(2) There are measurements of the properties of the applied Komoto et al toner composition (toner particles) in according to:

said toner has a shear viscosity (η_1) at 130°C and
a shear rate of 10/s in the range of 800 to 3,500 Pa·s; and
said toner has a shear viscosity (η_2) at 130°C and
a shear rate of 500/s in the range of 100 to 1,000 Pa·s.

RATIONAL: One skilled in the art and/or an average skill artisan at the time the invention was made would recognize that each of the applied Komoto et al toners has a shear viscosity value, insoluble component in tetrahydrofuran, ratio

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(Dv/Dp), Accordingly, the applied Komoto et al toners have a range of values of shear viscosities, a range of values of insoluble values, a ranges of value of ratio (Dv/Dp) when of if each of them are made and measured. For a patentability of the claims, applicant, assignee and/or their counsel is requested and urged to early, timely and candidly provide convincing evidence to the contrary for an early consideration to early withdrawal of the rejection for an early allowance of the claims to avoid a lengthy and costly litigation during and after an allowance of the claims. Evidence being not considered during the prosecution must be firstly considered and taken to a full and complete satisfaction before allowing or permitting any other issue to be taken. One should be carefully looked into the issues on the record since a benefit may be found and obtained. The language "shear viscosity...", "insoluble...", "ratio (Dv/Dp)..." or the like is a property or measurement of a property of a material (toner composition). For a patentability of a property or measurement of a property of the material, it is allowed by law to request and require applicants to convincingly show or provide convincing evidence to the contrary since arguments alone are not factual evidences. An allowed claim or patent would have no value when someone reasonably shows to same or obviously about the same claimed property as clearly pointed out and set forth on the record using all possible combinations of the broad teachings and/or

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suggestions in the applied reference and/or with an average skill artisan at the time the invention was made. In the absence of convincing evidence as clearly pointed out and set forth on the record, the above claims are reasonably found to be rendered prima facie obvious by Komoto et al.

III. Claims 1-4, 6-12 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawa (WO 01/01200 having its English language equivalent to 6,720,122).

FACT: Ogawa discloses, teaches and suggests an electrographic toner composition and processing steps for forming toner particles. The toner composition comprises color resin particles containing a binder resin, a colorant, a charge control agent and a parting agent having an acid value of 10 mg KOH/g or less. The particles have an average diameter from 3 to 8 microns. Please see the whole disclosure of the applied reference, especially on col.4:35 to 15:24 and Examples in 6,720,122).

ISSUES: The issues are needed to be resolved to overcome the applied reference:

(1) The language "is produced by..." a composition (material) claim is a product-by-process. According to the MPEP, "even though product-by-

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process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (MPEP 2113 [R-I], see *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966).

(2) There are measurements of the properties of the applied Komoto et al toner composition (toner particles) in according to:

said toner has a shear viscosity (η_1) at 130°C and
a shear rate of 10/s in the range of 800 to 3,500 Pa·s; and
said toner has a shear viscosity (η_2) at 130°C and
a shear rate of 500/s in the range of 100 to 1,000 Pa·s.

RATIONAL: One skilled in the art and/or an average skill artisan at the time the invention was made would recognize that each of the applied Komoto et al toners has a shear viscosity value, insoluble component in tetrahydrofuran, hydroxyl value, an average circularity, ratio (D_v/D_p). Accordingly, the applied Komoto et al toners have a range of values of shear viscosities, a range of values of insoluble values, a range of hydroxyl values, a range of average circularity values, a ranges of value of ratio (D_v/D_p) when of if each of them are made and measured. For a

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patentability of the claims, applicant, assignee and/or their counsel is requested and urged to early, timely and candidly provide convincing evidence to the contrary for an early consideration to early withdrawal of the rejection for an early allowance of the claims to avoid a lengthy and costly litigation during and after an allowance of the claims. Evidence being not considered during the prosecution must be firstly considered and taken to a full and complete satisfaction before allowing or permitting any other issue to be taken. One should be carefully looked into the issues on the record since a benefit may be found and obtained. The language "shear viscosity...", "insoluble...", "hydroxyl value...", "average circularity...", "ratio (Dv/Dp)..." or the like is a property or measurement of a property of a material (toner composition). For a patentability of a property or measurement of a property of the material, it is allowed by law to request and require applicants to convincingly show or provide convincing evidence to the contrary since arguments alone are not factual evidences. An allowed claim or patent would have no value when someone reasonably shows to same or obviously about the same claimed property as clearly pointed out and set forth on the record using all possible combinations of the broad teachings and/or suggestions in the applied reference and/or with an average skill artisan at the time the invention was made. In the absence of convincing evidence as clearly pointed out and set forth on the record,

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the above claims are reasonably found to be rendered prima facie obvious by Ogawa.

IV. Claims 1-5, 10-12 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuo et al (WO 01/01200 having its English language equivalent to 6,562,535).

FACT: Masuo et al disclose, teach and suggest an electrographic toner composition and processing steps for forming toner particles. The toner composition comprises color resin particles containing a binder resin, a colorant, a charge control agent and a parting agent. The particles have an average diameter of about 3-7 microns, dv/dp of less than 1.4, spheroidicity of 1.0 to 1.3. Please see the whole disclosure of the applied reference, especially on col.4:35 to 19:48 and Examples in 6,562,535).

ISSUES: The issues are needed to be resolved to overcome the applied reference:

(1) The language "is produced by..." a composition (material) claim is a product-by-process. According to the MPEP, "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product

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does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (MPEP 2113 [R-I], see *In re Thorpe*, 777F.2d 695, 698,227 USPQ 964,966).

(2) There are measurements of the properties of the applied Komoto et al toner composition (toner particles) in according to:

said toner has a shear viscosity (η_1) at 130°C and a shear rate of 10/s in the range of 800 to 3,500Pa·s; and
said toner has a shear viscosity (η_2) at 130°C and a shear rate of 500/s in the range of 100 to 1,000Pa·s.

RATIONAL: One skilled in the art and/or an average skill artisan at the time the invention was made would recognize that each of the applied Komoto et al toners has a shear viscosity value, insoluble component in tetrahydrofran, glass transition, an average circularity, ratio (D_v/D_p). Accordingly, the applied Komoto et al toners have a range of values of shear viscosities, a range of values of insoluble values, glass transition, a range of average circularity values when of if each of them are made and measured. For a patentability of the claims, applicant, assignee and/or their counsel is requested and urged to early, timely and candidly provide convincing evidence to the contrary for an early consideration to early

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withdrawal of the rejection for an early allowance of the claims to avoid a lengthy and costly litigation during and after an allowance of the claims. Evidence being not considered during the prosecution must be firstly considered and taken to a full and complete satisfaction before allowing or permitting any other issue to be taken. One should be carefully looked into the issues on the record since a benefit may be found and obtained. The language “shear viscosity...”, “insoluble...”, “glass transition...”, “average circularity...” or the like is a property or measurement of a property of a material (toner composition). For a patentability of a property or measurement of a property of the material, it is allowed by law to request and require applicants to convincingly show or provide convincing evidence to the contrary since arguments alone are not factual evidences. An allowed claim or patent would have no value when someone reasonably shows to same or obviously about the same claimed property as clearly pointed out and set forth on the record using all possible combinations of the broad teachings and/or suggestions in the applied reference and/or with an average skill artisan at the time the invention was made. In the absence of convincing evidence as clearly pointed out and set forth on the record, the above claims are reasonably found to be rendered prima facie obvious by Masuo et al.

V. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komoto et al (2005/0026063) considered in view of Ogawa (WO 01/01200 having its English language equivalent to 6,720,122) and Umino (5,885,366).

FACT: Komoto et al disclose, teach and suggest an electrographic toner composition and processing steps for forming toner particles. The toner composition comprises color resin particles containing a binder resin, a colorant, a charge control agent and a parting agent. The particles have an average diameter from 4 to 8 microns and an average circularity of from 0.950 to 0.995. Please see the whole disclosure of the applied reference, especially on paragraphs 0029, 0034, 0038, 0078, 0082, 0092, 0094, 0104, 0113 to 0122, 0135 to 0147 and Examples.

ISSUES: The issues are needed to be resolved to overcome the applied reference:

(1) The language "is produced by..." a composition (material) claim is a product-by-process. According to the MPEP, "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product

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does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (MPEP 2113 [R-I], see *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966).

(2) There are measurements of the properties of the applied Komoto et al toner composition (toner particles) in according to:

said toner has a shear viscosity (η_1) at 130°C and a shear rate of 10/s in the range of 800 to 3,500 Pa·s; and
said toner has a shear viscosity (η_2) at 130°C and a shear rate of 500/s in the range of 100 to 1,000 Pa·s.

RATIONAL: One skilled in the art and/or an average skill artisan at the time the invention was made would recognize that each of the applied Komoto et al toners has a shear viscosity value, insoluble component in tetrahydrofuran, ratio (D_v/D_p). Accordingly, the applied Komoto et al toners have a range of values of shear viscosities, a range of values of insoluble values, a ranges of value of ratio (D_v/D_p) when of if each of them are made and measured. For a patentability of the claims, applicant, assignee and/or their counsel is requested and urged to early, timely and candidly provide convincing evidence to the contrary for an early consideration to early withdrawal of the rejection for an early allowance of the

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claims to avoid a lengthy and costly litigation during and after an allowance of the claims. Evidence being not considered during the prosecution must be firstly considered and taken to a full and complete satisfaction before allowing or permitting any other issue to be taken. One should be carefully looked into the issues on the record since a benefit may be found and obtained. The language "shear viscosity...", "insoluble...", "ratio (Dv/Dp)..." or the like is a property or measurement of a property of a material (toner composition). For a patentability of a property or measurement of a property of the material, it is allowed by law to request and require applicants to convincingly show or provide convincing evidence to the contrary since arguments alone are not factual evidences. An allowed claim or patent would have no value when someone reasonably shows to same or obviously about the same claimed property as clearly pointed out and set forth on the record using all possible combinations of the broad teachings and/or suggestions in the applied reference and/or with an average skill artisan at the time the invention was made. In the absence of convincing evidence as clearly pointed out and set forth on the record, claims 1-5, 10-12 and 16-19 are reasonably found to be rendered prima facie obvious by Komoto et al.

Komoto et al disclose, teach and suggest a use of a parting agent for the benefit of an anti-offset benefit but does not specify the known use of a

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multifunctional ester compounds as those in claims 6-9. However, it is known in the art to obtain and use a multifunctional ester compound as a parting compound for the advantage of obtaining a low fixing benefit. Evidence can be seen in Ogawa on at least col.4:35 to 6:11 and 9:65 to 10:28. Since the above references with respect to Komoto et al and Ogawa are related to toner compositions, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a known multifunction ester compound as a parting agent for a reasonable expectation of obtaining an anti-offsetting benefit as disclosed, taught and suggested Ogawa.

Komoto et al disclose, teach and suggest a use of a modifying agent for obtaining a fixing benefit, a known crosslinkable agent for a fixing benefit to one having ordinary skill in the art at the time the invention was made but does not specify the known use of a specific crosslinkable agent as those in claims 13-15. However, it is known in the art prior to the time the invention was made to obtain and use 1,9-nonandiol diacrylate crosslinkable agent to provide crosslinkable resin because a low fixing temperature benefit would be obtained with a use of a crosslinked resin to one having ordinary skill in the electrographic art at the time the invention was made Evidence can be seen in Umino with the teachings and/or suggestions of 1,9-nonandiol diacrylate as a crosslinkable agent on at least

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col.15:49, 66-67, 35 to 6:11 and 9:65 to 10:28 (None of methods for washing and compositions for washing in Umino is suggested in this rejection). Accordingly, one having ordinary skill in the art would use 1,9-nonandiol diacrylate crosslinkable agent from Umino for making a crosslink resin for a low fixing temperature benefit because it is well known and practiced in the electrographic art with a crosslinked resin for a low fixing temperature benefit than that of no crosslinking one.

VI. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuo et al (WO 01/01200 having its English language equivalent to 6,562,535) considered in view of Ogawa (WO 01/01200 having its English language equivalent to 6,720,122) and Umino (5,885,366).

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FACT: Masuo et al disclose, teach and suggest an electrographic toner composition and processing steps for forming toner particles. The toner composition comprises color resin particles containing a binder resin, a colorant, a charge control agent and a parting agent. The particles have an average diameter of about 3-7 microns, dv/dp of less than 1.4, spheroidicity of 1.0 to 1.3. Please see the

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whole disclosure of the applied reference, especially on col.4:35 to 19:48 and Examples in 6,562,535).

ISSUES: The issues are needed to be resolved to overcome the applied reference:

(1) The language "is produced by..." a composition (material) claim is a product-by-process. According to the MPEP, "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (MPEP 2113 [R-I], see *In re Thorpe*, 777F.2d 695, 698,227 USPQ 964,966).

(2) There are measurements of the properties of the applied Komoto et al toner composition (toner particles) in according to:

said toner has a shear viscosity (η_1) at 130°C and
a shear rate of 10/s in the range of 800 to 3,500Pa·s; and
said toner has a shear viscosity (η_2) at 130°C and
a shear rate of 500/s in the range of 100 to 1,000Pa·s.

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RATIONAL: One skilled in the art and/or an average skill artisan at the time the invention was made would recognize that each of the applied Komoto et al toners has a shear viscosity value, insoluble component in tetrahydrofran, glass transition, an average circularity, ratio (D_v/D_p). Accordingly, the applied Komoto et al toners have a range of values of shear viscosities, a range of values of insoluble values, glass transition, a range of average circularity values when of if each of them are made and measured. For a patentability of the claims, applicant, assignee and/or their counsel is requested and urged to early, timely and candidly provide convincing evidence to the contrary for an early consideration to early withdrawal of the rejection for an early allowance of the claims to avoid a lengthy and costly litigation during and after an allowance of the claims. Evidence being not considered during the prosecution must be firstly considered and taken to a full and complete satisfaction before allowing or permitting any other issue to be taken. One should be carefully looked into the issues on the record since a benefit may be found and obtained. The language “shear viscosity...”, “insoluble...”, “glass transition...”, “average circularity...” or the like is a property or measurement of a property of a material (toner composition). For a patentability of a property or measurement of a property of the material, it is allowed by law to request and require applicants to convincingly show or provide convincing evidence to the

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contrary since arguments alone are not factual evidences. An allowed claim or patent would have no value when someone reasonably shows to same or obviously about the same claimed property as clearly pointed out and set forth on the record using all possible combinations of the broad teachings and/or suggestions in the applied reference and/or with an average skill artisan at the time the invention was made. In the absence of convincing evidence as clearly pointed out and set forth on the record, claims 1-5, 10-12 and 16-19 are reasonably found to be rendered prima facie obvious by Masuo et al.

Masuo et al disclose, teach and suggest a use of a parting agent for the benefit of an anti-offset benefit but does not specify the known use of a multifunctional ester compounds as those in claims 6-9. However, it is known in the art to obtain and use a multifunctional ester compound as a parting compound for the advantage of obtaining a low fixing benefit. Evidence can be seen in Ogawa on at least col.4:35 to 6:11 and 9:65 to 10:28. Since the above references with respect to Komoto et al and Ogawa are related to toner compositions, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a known multifunction ester compound as a parting agent for a reasonable expectation of obtaining an anti-offsetting benefit as disclosed, taught and suggested Ogawa.

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Masuo et al disclose, teach and suggest a use of a modifying agent for obtaining a fixing benefit, a known crosslinkable agent for a fixing benefit to one having ordinary skill in the art at the time the invention was made but does not specify the known use of a specific crosslinkable agent as those in claims 13-15. However, it is known in the art prior to the time the invention was made to obtain and use 1,9-nonandiol diacrylate crosslinkable agent to provide crosslinkable resin because a low fixing temperature benefit would be obtained with a use of a crosslinked resin to one having ordinary skill in the electrographic art at the time the invention was made Evidence can be seen in Umino with the teachings and/or suggestions of 1,9-nonandiol diacrylate as a crosslinkable agent on at least col.15:49, 66-67, 35 to 6:11 and 9:65 to 10:28 (None of methods for washing and compositions for washing in Umino is suggested in this rejection). Accordingly, one having ordinary skill in the art would use 1,9-nonandiol diacrylate crosslinkable agent from Umino for making a crosslink resin for a low fixing temperature benefit because it is well known and practiced in the electrographic art with a crosslinked resin for a low fixing temperature benefit than that of no crosslinking one.

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VII. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa V. Le whose telephone number is 571-272-1332.

The examiner can normally be reached from 7:30 AM to 4:30 PM on Monday through Thursday and about the same time of most Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526.

Applicants may file a paper by (1) fax with a central facsimile receiving number 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hoa V. Le/ Primary Examiner, Art Unit 1795 032409

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